



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

William J. McGinley, Esq.
Patton Boggs LLP
2550 M Street, NW
Washington, DC 20037

MAY 27 2009

RE: MUR 6039
Mario Diaz-Balart for Congress
and Jose A. Riesco, in his official
capacity as treasurer

Dear Mr. McGinley:

On July 16, 2008, the Federal Election Commission notified your clients of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. A copy of the complaint was forwarded to your clients at that time.

Upon further review of the allegations contained in the complaint, and information supplied by your clients, the Commission, on May 12, 2009, voted to dismiss this matter. The Factual and Legal Analysis, which more fully explains the Commission's decision, is enclosed for your information.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003).

If you have any questions, please contact Wanda D. Brown, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read "Pete Blumberg", with a stylized flourish at the end.

Peter G. Blumberg
Assistant General Counsel

Enclosure
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Mario Diaz-Balart for Congress and Jose A. Riasco,
in his official capacity as treasurer

MUR: 6039

I. BACKGROUND

This matter arises out of a complaint filed with the Federal Election Commission (the "Commission") alleging that Mario Diaz-Balart for Congress and Jose A. Riasco, in his official capacity as treasurer (the "Committee" or "Respondents"), violated the Federal Election Campaign Act of 1971, as amended ("the Act"), by failing to adhere to the requirements of the Commission's regulations regarding joint fundraising.

Specifically, the complainant submits a copy of an invitation to a fundraising event benefitting three committees and alleges that the Respondents may have failed to: create or select a political committee to act as a fundraising representative; agree to a formula for allocating proceeds and expenses; sign a written agreement naming the fundraising representative and stating the allocation formula; notify potential contributors of the allocation formula when soliciting contributions; and establish a separate account for joint fundraising receipts and disbursements.

Based on all available information, including the complaint, copies of the solicitation for the event in question, as well the Respondent's response to the complaint, the Commission exercised its prosecutorial discretion and dismissed the allegation that the Respondents violated 11 C.F.R. § 102.17 by failing to adhere to the Commission's requirements governing joint fundraisers.

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II. FACTUAL AND LEGAL ANALYSIS

On May 30, 2008, Armando J. and Beatriz Bucelo hosted a fundraising event at their private residence in Miami, Florida, benefiting three committees. The hosts distributed invitations to the event via electronic mail and suggested that each attendee contribute \$200 per person to each of the three participating candidates, payable directly to each committee. Approximately fifty guests attended the event, which raised approximately \$6,000 per committee, with each contribution totaling less than \$200.

Although a disclaimer on the invitation states "Paid for by Ros-Lehtinen for Congress Lincoln Diaz Balart [*sic*] for Congress and Mario Diaz Balart [*sic*] for Congress," it appears that the event was conducted with minimal expenses, and almost all the expenses were incurred by the Bucelos. There was no expense for the venue since the Bucelos organized the event at their private residence. In addition, the Bucelos did not hire a caterer, offer valet parking, or provide entertainment for the event. It appears that the total cost for the event was less than \$400 for food and beverages and a *de minimis* payment for a photographer for the event. It is unclear whether one or all of the Respondents or the hosts paid for the photographer. A review of disclosure reports confirms that the three Respondent committees did not form a joint fundraising entity for the May 30, 2008, event, although around this time, Lincoln and Mario Diaz-Balart did register a joint fundraising entity together with the Republican Party of Florida.¹

¹ The joint fundraising committee, the Lincoln and Mario Diaz-Balart Florida Victory Committee, filed a statement of organization with the Commission on May 28, 2008. It filed its first disclosure report with the Commission in July 2008, disclosing \$400,900 in contributions and \$339,604 in disbursements. However, the earliest receipts dated to June 25, 2008, and the earliest disbursements were made on June 27, 2008, after the date of the Bucelo event.

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The complainant provided no information about the event other than a copy of the invitation. Thus, it appears that the allegations are based entirely on the invitation and any inferences that can be drawn from it. In their response to the Complaint, the Respondents explain that the event was a "low-cost grass-roots event" planned and funded by the Bucelos, and maintain that the exemption to the definition of "contribution" under 2 U.S.C. § 431(8)(B)(ii), also known as the "volunteer exemption," allows individuals to contribute up to \$1,000 for invitations to, and food and beverages served at the individual's residential premises. The Respondents assert that since the event's expenses qualified for the "volunteer exemption," the joint fundraising requirements do not apply, and request that the Commission find no reason to believe that a violation occurred and dismiss this matter.

The Commission has determined that because of the low dollar amounts involved it is appropriate to dismiss the complaint.

Because the Bucelos funded most of the event's costs, and the cost of the photographer was apparently *de minimis*, it appears the participating committees advanced no funds for the event that could have resulted in excessive contributions to each other. There also appear to have been no shared receipts, eliminating concerns over any possible misallocation of proceeds from the fundraiser.

Accordingly, the Commission exercised its prosecutorial discretion pursuant to *Heckler v. Chaney*, 470 U.S. § 821 (1985), and dismissed the allegation that Mario Diaz-Balart for Congress and Jose A. Riesco, in his official capacity as treasurer, violated

11 C.F.R. § 102.17 by failing to adhere to the Commission's regulations pertaining to joint fundraising.²

² The Respondents argue the "volunteer exemption" of 2 U.S.C. § 431(B)(ii) and 11 C.F.R. § 100.77, which permits the Bucelos to incur costs of up to \$1,000-\$2,000 related to hosting the fundraiser without making a contribution or expenditure on behalf of a participating committee, provides further basis for dismissing the complaint. The Commission does not need to address the Respondents' argument in reaching this conclusion.